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A Student's Guide to Secured Transactions, Bulk Transfers and Bankruptcy

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A STUDENT'S GUIDE TO SECURED TRANSACTIONS, BULK TRANSFERS AND BANKRUPTCY

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For
PK ELLIS
and
WILLIAM F. WILLIER
For reasons known to each of them

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Robert Laurence
Fayetteville

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Albuquerque

April 1985

PREFACE

Why another book or guide to commercial transactions? There are excellent texts on the market and a plethora of outlines. This is not a text. Indeed, we urge you to read and study those that are available. It is an outline, but, we believe, a very different kind of outline; less complete than others that have been published, but, we hope, more useful to those learning the subject for the first time.

Why do we believe this guide will be more helpful than those written by others? Well, we think we have a different approach. We are not trying to summarize the law, as useful as that may be. This book is not much interested in the details; nor in the complex problems that arise under the law, as much as those problems may interest us as teachers and researchers. What we have tried to do is to give an approach to the several types of problems that arise under Articles Nine and Six of the Uniform Commercial Code and the Bankruptcy Code. Through the use of relatively straightforward problems, we have attempted to show how we (and we believe everyone else) analyzes these problems. Through this approach, we believe you can best learn the basic concepts necessary to master these areas of the law.

We are somewhat suspicious of detail. A lot of detail, we suspect, you will forget until your first client with a commercial problem *really* gets your attention. We want to teach you now some things that you have a chance of remembering past the exam. To wit: *concepts*. How Article Nine hangs together; what Article Six is really about; what the basic notions of bankruptcy are. Occasionally, we will specifically leave issues unanswered, referring you to your teacher or the cases. When we do, remember why we do—we want you not to be distracted from the concepts by details you can easily master, when the time comes, on your own.

A few suggestions as you *use* this guide. First, we emphasize the word *use*, because it is not written to be *read* like a treatise or summary. It is more like a workbook, requiring, perhaps, more effort on

your part if you are to understand and become comfortable with our approach to the analysis of problems.

Second, we encourage you to go through *each* step of your analysis of a problem carefully at the beginning. As your knowledge of the law becomes more extensive, you may be able to eliminate steps or give short shrift to some in the context of some problems, but wait awhile before you try to speed your analysis by skipping.

Read the statute. READ THE STATUTE. You will find many statutory references in this guide. Usually, these citations take up only about a half-inch of space in the text and are easily ignored. Reading the statutory sections cited is time consuming, and understanding what the statute says is often difficult. Believe us, however, when we tell you that it is essential if you are to learn commercial law and that it will become easier the more you do it. Learning how to read the statute is the most important skill taught by the course in commercial law. Any lawyer will tell you how significant statutes are in the practice of law and that it is a skill no less important than that of reading cases. Don't worry too much if you have trouble with the wording of a particular section the first time you read it. Read it again, in connection with the applicable part of this guide and the Official Comments. Read it again! READ IT AGAIN! We are confident that ultimately even the most complex sections of the Uniform Commercial Code and the Bankruptcy Code will become understandable.

We also encourage you to read the many fine treatises, texts and summaries of commercial law that have been published. This is not a substitute for them. They all have more detail than does this guide, and each attempts to explain the law in its own way. We still regularly consult them in our research and in preparing for class. Seeing how others approach a topic is usually enlightening and will aid in your understanding of the subject matter. And don't ignore the Official Comments. They are often helpful in explaining the statutory language.

Finally, use this guide in conjunction with the course you are taking. It is not designed as a quick review to be picked up the night before your final exam. Although we have used this guide, successfully we believe, as the primary book in a survey course, supplemented by a number of handouts, we expect that most of you will be in courses where your instructor is using one of the national casebooks or locally produced materials. The casebook is important, and you should not neglect it. The cases demonstrate what happens when courts are faced with the same problem that you have; i.e., applying the statute to a fact situation. Your course will also flesh out the details omitted from this guide.

Why Articles Nine, Six and the federal Bankruptcy Code? Why in that order? By the end you will know. These are three important bits of legislation that deal with debtors and creditors, borrowing and lending, and the competition between parties when there isn't enough money to go around. We suspect that this text will fit in nicely with a course in your curriculum, perhaps called Creditor's Remedies, Commercial Transactions, or Secured Transactions.

A word about language: readable. That's what we have tried to be. Occasionally we have dropped the precision that is required by a treatise. We paraphrase, we change punctuation in order to get the concept across. Again, whenever we refer you to a particular statutory section, we urge you to look up that section and read it. When dealing with the U.C.C., the Bankruptcy Code or any other statute, there is absolutely no substitute for reading the statute.

One other word about language: sex. The English language has it. Many writers wish it didn't. We have attempted to take advantage of it. Generally speaking throughout this book debtors are male; creditors are female. We find that this sometimes makes problems and sentences easier to understand. We hope you agree. (How did we decide which would be which? We flipped a coin.)

We begin, then, with Article Nine of the Uniform Commercial Code and the security interest, the basic building block of present-day commercial financing. Good luck. We hope you enjoy your work.

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